

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL D. PLASKY,

Petitioner,

ORDER

09-cv-135-slc

v.

COUNTY OF ROCK, WISCONSIN;
STATE OF WISCONSIN;
MELISSA BROOKE JOOS, G.A.L for
State of Wisconsin; and
DIANE L. COUSIN,

Respondents.

On March 24, 2009, I denied petitioner's request for leave to proceed in forma pauperis and dismissed the case with prejudice for petitioner's failure to state a claim upon which relief may be granted. On April 6, 2009, I denied petitioner's motion for reconsideration. Now before the court is petitioner's notice of appeal. Because he has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal.

Petitioner's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. In Lucien v. Roegner, 682

F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a petitioner is appealing the same claims the court found to be without legal merit in denying petitioner leave to proceed on his complaint. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Petitioner is trying to appeal the same claims I have found to lack legal merit. Because there is no legally meritorious basis for petitioner's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED. I certify that his appeal is not taken in good faith.

Entered this 13th day of April, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge